Registered Charities Newsletter

BN/Registration Number

No. 15

Table of contents

From the Director General 1

What's new 2

- Thirty-five years of registering charities 2
- Facts and figures about charities and the CCRA 2

Court news 3

- Related vs. unrelated business 3
- Political activities lead to revocation 3

Issues 4

- Gifts by direct designation 4
- Registered charities as internal divisions of other charities 4

Policy news 5

- Improving the rules under which charities operate 5
- Elimination of racial discrimination as a charitable purpose 5
- New interim guidelines on gifts affect split-receipting 5
- Coming soon: A proposed policy on registering ethnocultural organizations as charities 5

Contact information 6

From the Director General

Changing society, changing sector

The registration process for charities was established just over 35 years ago in 1967. The number of registered charities has increased from an initial registration of 35,000 during the first year, to more than double that number today.

Charity evolves with society and societal needs and accordingly, the law that defines charity has often been referred to as a moving object. It changes with time and circumstances as legislation - such as amendments to the *Income Tax Act* - and court decisions have influenced the meaning of charity. Looking back, we can see evidence not only of a growth in numbers, but also of a change in the type of charities that are registered. Today, registered charities further a broader range of purposes and activities than ever before as they strive to meet the changing needs of Canadian society. Some of these changes are evident in even the general types of organizations that are registered. Information on the types of charities presently registered is included with this newsletter.

These changing needs are partly a reflection of contemporary Canadian society. Canada has always been a country of immigration and one whose strength rests in part on its diversity. Charities have played an important role in responding to Canada's diverse and changing needs. Recognizing this, the Charities Directorate has developed a new draft policy on eliminating racial discrimination.

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The Directorate is also creating a draft policy that considers the particular registration issues faced by organizations concerned with ethnocultural minorities. Many of these organizations are currently registered. Others are being considered. Some organizations do not qualify.

We recognize the need to respond to ongoing changes in other aspects of Canadian society as well. Future Directions, an initiative supported by the Minister of National Revenue, was put in place in part to help the Canada Customs and Revenue Agency (CCRA) identify the essential elements needed to ensure that the services delivered by the Charities Directorate meet the future needs of the charitable sector. For example, the last 35 years have seen huge technological advances and Future Directions has identified enhancing electronic services as one the areas of focus for the Charities Directorate.

Future Directions has identified other needs to Canadians now call for opportunities for increased citizen participation and require greater openness in the workings of government. For the Charities Directorate this has meant being more strongly committed to consultation and being more responsive to the views of the charitable sector and the general public.

Future Directions increased co-operation with the voluntary sector and has also highlighted a need for the Charities Directorate to focus on compliance activities and increase transparency of both compliance programs and CCRA decisions.

We would appreciate hearing your feedback on all Future Directions approaches and accomplishments. A pamphlet about Future Directions as it relates to charities is included with this newsletter. Responses can be sent at the address listed at the back of this pamphlet of through the questionnaire on the Future Directions report at **www.ccra.gc.ca/agency/directions/survey-e.html**.

Finally, the charitable sector relies on the continued availability of assistance in complying with charity law and the *Income Tax Act*. One of the programs that the Charities Directorate has undertaken to help with this has been the Road Show. This series of information sessions for registered charities will be taking place again this spring. We invite and encourage you to participate.

What's new?

Thirty-five years of registering charities

In 1966, the *Report of the Royal Commission on Taxation* (the Carter Commission) recommended that a supervisory body be set up to review applications for charitable registration. In 1967, a registration process within the Department of National Revenue was established under the *Income Tax Act*. Before this time, there was no formal requirement for a charity to obtain recognition from the department in order to issue receipts.

The number of charities has grown significantly over the years. In 1967, 35,000 charities were registered. Today over 78,000 organizations are registered charities. In the early years, most applications were straightforward because they were from traditionally recognized sectors of charity such as religious organizations and schools. Today, many traditional charities have long since been registered and the CCRA now deals with a more diverse group of registrants.

The table on page 6 shows the number of registered charities by province or territory and by general type as of January 11, 2003.

Facts and figures about charities and the CCRA today

In 2002, the Charities Directorate:

- received 3,017 new applications for registration as a charity;
- received 540 applications for re-registration as a charity;
- sent 1,054 letters to applicants advising them of CCRA's tentative view that they would not qualify for registration. Charities may make further representations after receiving such a letter and may eventually be registered if they address the concerns raised in the letter;
- formally denied 56 applications. These applicants may appeal this refusal by filing a Notice of Appeal with the Federal Court of Appeal within 30 days from the time the letter was mailed;
- registered 2,281 charities (including both new registrations and re-registrations);
- revoked the charitable status of 800 organizations at their request;
- revoked 1,599 registered charities because they did not file their annual registered charity information return in the six-month period after their fiscal year-end;
- revoked 5 registered charities for cause (e.g., because their activities did not comply with the requirements of the *Income Tax Act*), and
- completed 475 audits of registered charities as a result of public complaints, random selection, or based on annual information returns.

Our audits revealed that most charities are complying with the *Income Tax Act*, although some charities erred because they misunderstood the requirements of the law or the Act. For example, in filing their annual return some were confused about the difference between expenses on charitable work as opposed to administration or fundraising expenses and filled out their return incorrectly as a result. For misunderstandings like these, we sent letters to the charities to explain what they had to do to comply with the law. In a few cases, the contraventions were so serious they resulted in the revocation of the charities involved.

Court news

Related vs. unrelated business

On December 16, 2002, the Federal Court of Appeal unanimously dismissed the appeal of Earth Fund/Fond Pour la Terre ("Earth Fund") from our decision to refuse to register it as a charity.

Earth Fund proposed to operate a worldwide fundraising lottery on the Internet as its main activity. The lottery was to have operated out of Prince Edward Island. Generally, lotteries are prohibited in Canada but paragraph 207(1)(b) of the *Criminal Code* makes an exception for charitable or religious organizations. If the proceeds go to charity and the organization receives a license from the Lieutenant Governor, the charity may operate a lottery in that province. Such a license was initially granted to Earth Fund but questions about its legality arose. On April 24, 2002, the Supreme Court of P.E.I., Appeal Division, heard a reference from the Lieutenant Governor in Council regarding the legality of the proposed lottery scheme. In its judgment, the Supreme Court of P.E.I. found that such a scheme would not be legal, effectively barring Prince Edward Island from starting Canada's first Internet gaming site. That judgment is being appealed, as of right, to the Supreme Court of Canada and was scheduled to be heard on March 11, 2003.

In the case before the Federal Court of Appeal, Sharlow J.A., writing for the Court, pointed out that a sufficient ground to dismiss the appeal is that no organization will be recognized as charitable in law if its activities are illegal. Therefore, as long as the decision of the Supreme Court of P.E.I. remains in force, Earth Fund cannot operate the lottery without breaching the gaming provisions of the *Criminal Code*.

Regarding the drafting of the Earth Fund's corporate purposes, Sharlow J.A. further noted that:

> ...even the corporate objects upon which the appellant specifically relies are to broad to permit a conclusion that the appellant's proposed activities are exclusively charitable. The language in question, from sections 7 and 8 of its corporate objects, is as follows:
>
> "7. To use, apply, give, donate, accumulate or distribute from time to time all or part of the income of the Corporation to or for any Canadian charitable organization."
>
> "8. To raise funds by any means including an on-going global or other lottery, and to directly or indirectly fund projects relating to the objects of the Corporation and the global environment, ecology and humanitarian activities relating to health, habitat, migration of refugees or other population groups, natural or non-natural catastrophes, health and welfare of children and environmentally sustainable development, on its own behalf or through its charitable agents or beneficiaries."
>
> Section 8 on its face is broad enough to authorize the appellant to fund environmental and humanitarian projects undertaken by organizations that are not "qualified donees". It is also broad enough to permit the appellant to fund a commercial venture aimed at exploiting a renewable source of energy, which presumably would benefit the environment, with or without sharing in any potential profits from the venture. Indeed, section 8 is so broad that it would permit the appellant to carry on such a commercial enterprise itself, and section 7 would permit the appellant to accumulate its profits without making any distributions at all, even to qualified donees." *

Sharlow J.A. also considered the decision of the Federal Court of Appeal in *Alberta Institute on Mental Retardation v. Canada*, rejecting the argument that the case is authority for the proposition that any business is a "related business" of a charitable foundation if all the profits of the business are dedicated to the foundation's charitable objects. Sharlow J.A. concluded that:

> I do not accept the argument of counsel for the appellant that the *Alberta Institute* case is authority for the proposition that any business is a "related business" of a charitable foundation if all of the profits of the business are dedicated to the foundation's charitable objects. The Minister in that case was arguing that Alberta Institute was "a wholesaler of goods", but in fact Alberta Institute was simply soliciting donations of goods which it converted to money. This is somewhat different from the traditional fundraising activities of a foundation, but the difference is only a matter of degree." **

The CCRA has published draft guidelines on what qualifies as a related business based on this interpretation. These are available at **www.ccra.gc.ca/tax/charities/consultation_policy-e.html**. We expect to finalize these guidelines this spring.

Political activities lead to revocation

On December 16, 2002, the Federal Court of Appeal dismissed the appeal of *Action des chrétiens pour l'abolition de la torture* (ACAT) from the CCRA's proposed revocation of its registration as a charity.

Essentially, ACAT was dedicated to abolishing torture worldwide. However, it was achieving this mainly through activities such as mail campaigns to heads of state, which have traditionally been viewed by the courts as not charitable.

The Court confirmed that ACAT's activities, while non-partisan, were nevertheless political at common law. Their political activities exceeded the statutory limit specified by the *Income Tax Act*, and had, in fact, become an unwritten purpose.

A charity can become involved in political activities if these help achieve the charity's purpose. However, such activities cannot become more than an ancillary and incidental concern of the organization.

Although the rules regarding political activities are under consideration with a view to expanding permissible activities, organizations that substantially carry on political activities, as opposed to charitable activities, do not qualify for registration as charities nor would they under the proposed rules.

The decision of the Federal Court of Appeal in *Action des chrétiens pour l'abolition de la torture* is available on the Federal Court of Canada's Web site at **www.fct-cf.gc.ca**.

* Earth Fund v. Canada (Minister of National Revenue) (2002 FCA 498) A-260-01 Date: 2002-12-16.

** Ibid.

Issues

Gifts by direct designation

In some cases, individuals may wish to designate the proceeds from their registered retirement savings plan (RRSP), registered retirement income fund (RRIF), or life insurance policy to a charity upon their death. In the past, such donations have not been recognized in the same manner as gifts under a will, and thus could not be claimed on the donor's final return. This sometimes led to the imposition of tax as a result of the disposition of the RRSP or RRIF, but without a corresponding tax credit.

New subsections 118.1(5.1), (5.2), and (5.3) of the *Income Tax Act* have resulted in the two situations - a charity named in will and a charity named as direct beneficiary - being treated the same way. The Act was amended to extend the availability of the charitable donations tax credit to eligible transfers under a life insurance policy that are made as a consequence of a direct beneficiary designation under the policy. Accordingly, for deaths occurring after 1998, a charitable donation tax credit can be claimed on an individual's final return where a qualifying transfer to a qualified donee is made under a life insurance policy that insures the individual's life.

For example, a donor named a registered charity as the beneficiary of his life insurance policy (or RRSP of RRIF) on his death. The insurance company then paid the amount of the insurance to the charity for which the executors request a charitable receipt. Under the new provisions, a charitable donation tax receipt can be provided to the executors of the estate. The executors can claim the donation tax credit on the deceased individual's final tax return.

Such payments are now deemed to be gifts, but only for the purpose of section 118.1, when the requirements of subsections 118.1(5.1) and (5.3) of the Act are satisfied. Accordingly, at present such payments do not qualify as gifts for the purposes of subsection 149.1(1) and are, therefore, not included in the disbursement quota.

Registered charities as internal divisions of other charities

Some charities choose to organize themselves as parent organizations with internal divisions. Sometimes, for administrative convenience, such charities choose to register those internal divisions separately. The *Income Tax Act* recognizes that internal divisions of Canadian registered charities can themselves be registered.

An internal division is a part or an operating unit of an existing registered charity. For our purposes, this means the division is not a legal entity in its own right but instead operates under the control, direction, and governing documents of the parent organization. Therefore, the internal division is not itself incorporated and generally does not have a separate constitution.

Some of the indicators we use to determine if the relationship between a registered charity and another organizational unit is a parent organization/internal division relationship include:

- the governing document of a parent organization authorizing it to create internal divisions;
- the internal division's budget requiring the approval of the parent organization;
- the parent organization holding title to property used or managed by the internal division; and
- the parent organization having to sign all contracts, loans, or agreements affecting the internal division.

When applying for registration, internal divisions of registered Canadian charities must show their relationship to the parent organization. This requires a letter of good standing from the parent organization signed by a director or trustee of the parent organization that:

- confirms the status (branch, section, parish, congregation, or other division) of the internal division;
- gives the officially recognized names of both organizations in full;
- gives the effective date when the internal division was created;
- provides the name of the governing document it was established under; and
- confirms that the internal division operates under the governing documents of the parent organization.

Some registered charities choose to establish branches of their organization not as internal divisions but as separate legal entities. These groups are considered to be legal entities where they have a governing document that establishes their separate legal existence apart from the parent body (e.g., through incorporating documents, constitution, or trust deed). Since these groups generally share common charitable purposes, their governing documents are often similar or identical to those of the parent body. They may even be created by virtue of the governing documents of the parent organizations.

In this last case, when applying for registration, branches established as legal entities of registered Canadian charities must provide a letter confirming their governing documents. This letter should be signed by a representative of the separate legal entity indicating that individual's position within the organization and also include the following information:

- confirmation of name of the applicant;
- confirmation as to how it was established (e.g., parish branch of the parent organization);
- the date which it was established; and
- a statement whereby the applicant confirms that it abides by the governing documents (e.g., constitution, incorporating documents) of the parent organization.

A branch established as a legal entity is assigned a distinct Business Number (BN).

An internal division of a charity will be given a BN with the same nine-digit root as its parent organization, and its charity account will have "RR" as its two-letter program identifier. However, it will have a different account identifier (the four-digit identifier that follows the root). For example, an internal division whose parent organization has the BN 123456789RR**0001** might be given the BN 123456789RR**0002**.

Charities that are internal divisions have to include their BN with the correct account identifier on their returns.

receipts, or other documents, rather than the BN or identifier that applies to the parent organization.

If you have questions, please see the guide *Registering a Charity for Income Tax Purposes* (T4063), or contact the Charities Directorate.

Policy news

Improving the rules under which charities operate

The Joint Regulatory Table's presentation of its final report, *Improving the Regulatory Environment for the Charitable Sector*, to Federal Ministers took place this spring. Information on how to obtain this publication will be on our "What's new" page at **www.ccra.gc.ca/tax/charities/whatsnew/whatsnew-e.html**.

Elimination of racial discrimination as a charitable purpose

Canadians recognize that racial discrimination is a social problem that needs to be addressed. Worldwide, there is a growing appreciation that the activities of organizations that promote racial equality can be manifestly beneficial to the public. In light of this, the Charities Directorate has reviewed the relevant jurisprudence and the status of this issue and has drafted a policy statement on registering charities that are devoted to eliminating racial discrimination.

The new draft policy recognizes that an organization whose purposes are devoted to eliminating discrimination and promoting positive race relations within Canada can be charitable. It looks specifically at how some of these organizations can be registered as charities under the existing charitable categories of "advancement of education" and/or "other purposes beneficial to the community as a whole."

While acting to change legislation is considered political, ensuring conformity with existing Canadian laws is not. Therefore, organizations that seek to eliminate racial discrimination by encouraging people to adhere to the law in Canada may be registered. This overdue administrative policy requires that eligible groups focus on the elimination of racism and positive race relations **within** Canada. A focus on international relations is a foreign policy matter and would be considered a political purpose.

The new draft policy also recognizes that when an ethnocultural community experiences documented patterns of discrimination, educating the public about this discrimination will not be considered self-interest to the extent that there is an overriding benefit to the public as a whole.

You can obtain a copy of the guidelines on the CCRA Web site. You can also order a copy by phone at the number indicated in the Contact Information Section of the Newsletter. A final version is being developed based on the feedback we have received.

New interim guidelines on gifts affect split-receipting

In December 2002, the Department of Finance released draft technical amendments to the *Income Tax Act* that affect the treatment of gifts under the Act. Accordingly, the CCRA released interpretational guidelines on split-receipting in *Income Tax Technical News No. 26*.

You can follow the guidelines in that publication to determine whether a transfer of property results in the making of a gift for the purpose of issuing official income tax receipts. In particular, the guidelines address situations such as:

- fund raising dinners;
- charity auctions;
- lotteries;
- concerts, shows, and sporting events;
- golf tournaments;
- membership fees;
- charitable annuities; and
- mortgaged property.

The key elements to this interpretative approach are as follows:

- there must be a voluntary transfer of property to the donee with a clearly ascertainable value;
- any advantage received or obtained by the donor or a person not dealing at arm's length with the donor in respect of the transfer must be clearly identified and its value ascertainable; and
- there must be a clear donative intent to enrich the donee.

You can find the *Income Tax Technical News* on the CCRA Web site at **www.ccra.gc.ca/tax/technical/incometax/itnews3-e.html**. You can also obtain a copy from your local tax services office.

Coming soon: A proposed policy on registering ethnocultural organizations as charities

This spring the Charities Directorate is making available a draft policy dealing with the registration of ethnocultural organizations and those seeking to address the needs of ethnocultural minorities, including immigrant and refugee groups. By developing clearer guidelines, we hope to make it more widely understood what types of ethnocultural organizations may be registered within the existing parameters of the law.

Registered Charities in Canada (as of January 11, 2003)

Charity Group	B.C.	Alta.	Sask.	Man.	N.W.T.	N.U.	Y.T.	N.B.	P.E.I.	N.S.	Nfld.	Ont.	Que.	National Total
Welfare	1,865	1,107	706	809	15	6	18	421	70	501	119	4,890	4,646	15,173
Health	738	478	304	301	13	0	6	168	45	253	78	1,973	1,131	5,488
Education	1,996	1,292	572	733	26	8	18	314	78	497	146	4,629	2,587	12,896
Religion	3,949	3,922	2,179	1,777	53	6	47	1,271	237	1,439	655	12,121	4,505	32,161
Benefits to community	2,018	1,529	788	736	21	3	28	461	121	995	151	3,527	1,808	12,186
Other	111	63	33	39	0	1	0	18	6	31	6	655	408	1,371
Total	10,677	8,391	4,582	4,395	128	24	117	2,653	557	3,716	1,155	27,795	15,085	79,276

Contact information

You can call us toll free at 1-800-267-2384 (English) or 1-888-892-5667 (bilingual).

You can also write to us at:

Charities Directorate
Canada Customs and Revenue Agency
Otawa ON K1A 0L5

You can find all our publications at:
www.ccra.gc.ca/charities

Draft publications for consultation are available at:
www.ccra.gc.ca/tax/charities/consultation_policy-e.html

For information on new additions about charities see the "What's new" page at:
www.ccra.gc.ca/tax/charities/whatsnew/whatsnew-e.html